

**BY ORDER OF THE SECRETARY
OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-403

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Law

INTERNATIONAL AGREEMENTS



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This publication implements Air Force Policy Directive (AFPD) 51-4, *Operations and International Law*. It describes the authority to negotiate and conclude certain categories of international agreements and sets guidelines for processing these agreements. It also explains how to gain the approval to negotiate and conclude international agreements that are beyond the listed delegations as set out in the governing Department of Defense (DoD) issuance. It details reporting and record-keeping requirements and is consistent with Department of Defense Directive (DoDD) 5530.3, *International Agreements*, Title 1 United States Code Section 112b (Case-Zablocki Act), AFPD 51-4 and Headquarters Air Force Mission Directive (HAFMD), 114 *General Counsel and the Judge Advocate General*. This publication applies to all Regular Air Force, Air Force Reserve, and Air National Guard military and civilian personnel. This publication may be supplemented at any level, but all supplements must be routed to the Office of Primary Responsibility (OPR) listed above for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the OPR listed above using the Air Force Form 847, *Recommendation for Change of Publication*; route Air Force Forms 847 from the field through the appropriate functional chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Air Force Instruction (AFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestor's commander for non-tiered compliance items. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363,

Management of Records, and disposed of in accordance with Air Force Records Information Management System Records Disposition Schedule.

SUMMARY OF CHANGES

This document has been revised and needs to be completely reviewed. It replaces Air Force Instruction (AFI) 51-701, *Negotiating, Concluding, Reporting, and Maintaining International Agreements* and changes the name of the instruction. Major changes include incorporating the National Defense Authorization Act for Fiscal Year 2017 splitting of the Office of the Under Secretary of Defense (Acquisition, Technology & Logistics) into two offices of under secretary, specifically the Office of the Under Secretary (Acquisition and Sustainment) and Office of the Under Secretary of Defense (Research and Engineering), and coordination of all intelligence-associated international agreements with Air Force/Intelligence, Surveillance, and Reconnaissance (AF/A2).

1.	Roles and Responsibilities.....	3
2.	Scope of Authority.....	5
3.	Procedures.....	10
4.	International Agreement Amendments.....	11
5.	Oral Agreements.....	11
6.	Agreements in Foreign Languages.....	11
7.	International Agreements Containing Advance Payment Terms.....	11
8.	Reporting Agreements.....	12
9.	Negotiating History of Agreements.....	12
10.	Office of Record.....	12
11.	Compliance.....	12
Attachment 1— GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION		14
Attachment 2— PROCEDURES FOR REQUESTING TO NEGOTIATE OR CONCLUDE AN INTERNATIONAL AGREEMENT		18
Attachment 3— REPORTING INTERNATIONAL AGREEMENTS		19

1. Roles and Responsibilities.

1.1. Air Force General Counsel (SAF/GC) shall:

1.1.1. Serve as the primary advisor for questions about the negotiation and conclusion of international agreements, to include whether any document constitutes an international agreement, and forward such questions to the Department of Defense Office of the General Counsel (DoD/GC) when necessary.

1.1.2. Resolve whether a proposed international agreement has “policy significance” requiring approval by the Office of the Under Secretary of Defense (Policy) (OUSD (P)) before any negotiation thereof, and again before conclusion.

1.1.3. Review and provide concurrence with all proposals for the negotiation and conclusion of international agreements originating or received in the Secretariat of the Air Force or the Air Staff.

1.1.4. Resolve questions on whether a proposed subsidiary arrangement is within the scope of an umbrella or master international agreement.

1.1.5. Provide review and concurrence before any draft proposed international agreement is tendered to a prospective party, initialed or concluded, and before any unilateral commitment is made to a foreign government.

1.1.6. Where appropriate, provide the legal memorandum to support a request to the OUSD(P) to negotiate and to conclude a proposed international agreement.

1.1.7. Monitor compliance with the requirements of DoDD 5530.3.

1.1.8. Provide support to and coordinate with relevant stakeholders and appropriate subject matter experts to resolve issues regarding the implementation and compliance with the terms of an international agreement. For those issues that cannot be settled by informal discussions, keep DoD/GC informed.

1.1.9. Serve as the liaison office with the DoD/GC on matters under DoDD 5530.3.

1.2. Director, International and Operations Law (AF/JAO) shall:

1.2.1. Issue advisory opinions regarding the authority of the organization initiating the international agreement process, upon request by the servicing staff judge advocate.

1.2.2. Receive and record requests, originating within the Air Force and requiring Office of the Secretary of Defense or Headquarters Air Force (HAF) approval, for the authority to negotiate or conclude an international agreement regarding predominately Air Force matters, and document coordination actions taken.

1.2.3. Provide review and concurrence before any draft proposed international agreement is tendered to a prospective party, initialed or concluded, and before any unilateral commitment is made to a foreign government for AF/JA matters in accordance with HAFMD 1-14.

1.2.4. Record delegations of authority to Air Force or subordinate units thereof to negotiate or conclude an international agreement, as well as denials of requests for authorization.

1.2.5. Where appropriate, provide the legal memorandum to support a request to the OUSD(P) to negotiate and to conclude a proposed international agreement.

1.2.6. Advise HAF concerning compliance with this instruction and, upon request from any HAF official, inquire into compliance by major commands (MAJCOM), direct reporting units (DRU), field operating agencies (FOA), wings and other Air Force units.

1.2.7. Report all international agreements in accordance with [paragraph 8](#) of this instruction and DoDD 5530.3.

1.2.8. Ensure two reproducible copies of each international agreement are sent to the DoD/GC not later than twenty (20) calendar days after the agreement enters into force in accordance with [Attachment 3](#) of this instruction.

1.2.9. Maintain a central repository and inventory of all agreements negotiated or concluded by HAF organizations and MAJCOM/DRU/FOA and subordinate units. Provide an annual report to DoD/GC identifying international agreements concluded or terminated in the previous year.

1.3. MAJCOM/DRU/FOA Staff Judge Advocate shall:

1.3.1. Review requests for delegation of approval authority and requests for authorization to negotiate or conclude international agreements. (T-0)

1.3.2. Ensure all delegations of authority by the Commander of MAJCOM/DRU/FOA are documented in writing by memorandum or AFI Supplement. (T-0)

1.3.3. Assist in drafting agreements and participate as required in negotiations.

1.3.4. Send request to AF/JAO to obtain necessary coordination and approval from HAF and DoD agencies on international agreements, if required. (T-1)

1.3.5. Maintain a central repository and inventory of all agreements, with the negotiation history, negotiated or concluded by MAJCOM/DRU/FOA and subordinate units. (T-1)
Note: For those MAJCOMs with an International Agreements Division outside of the legal office, the staff judge advocate will communicate, on at least a quarterly basis, the requirement to maintain a repository and report international agreements as required.

1.3.6. Review all proposed agreements prior to negotiations for legal determination as to whether the proposed agreement is an international agreement, is not an international agreement, is an administrative agreement with policy significance or an administrative agreement. Refer to [Attachment 1](#) for definitions. (T-0)

1.3.7. Review all international agreements negotiated by the command prior to conclusion to ensure compliance with international and US laws and regulations. However, if authority to negotiate has been further delegated, then it is the responsibility of that command's staff judge advocate. (T-0)

1.3.8. Report all international agreements as required by [paragraph 8](#). (T-0)

1.3.9. Provide AF/JAO one certified copy of international agreements concluded by the MAJCOM/DRU/FOA within five (5) calendar days of conclusion of the agreement. (T-1)
Provide additional certified copies as directed in [Attachment 3](#). (T-0)

1.3.10. Provide an annual list of current and terminated international agreements to AF/JAO by 31 January for the preceding year. (T-1)

1.3.11. Maintain a master index of MAJCOM/DRU/FOA international agreements and reconcile with AF/JAO on an annual basis. (T-1)

1.4. Wing/Servicing Staff Judge Advocate shall:

1.4.1. Provide a written legal memorandum reciting the Constitutional, statutory, or other legal authority available to carry out each obligation proposed to be assumed by the Air Force in the agreement, and an explanation of other relevant legal consideration in accordance with DoDD 5530.3, paragraph 9.3.2. (T-0) The written legal memorandum, at a minimum, shall address the following questions:

1.4.1.1. Is the proposal an international agreement or other international arrangement according to the definitions in this instruction and DoDD 5530.3, Enclosure 2?

1.4.1.2. If so, is the proponent vested with proper procedural and substantive authority to initiate the agreement process?

1.4.1.3. Is there an adequate legal and factual basis for the proponent's position regarding whether or not the proposed arrangement or agreement involves a predominantly Air Force matter or is policy significant?

1.4.1.4. What intra-agency (and, if applicable, inter-agency) coordination is required prior to commencing negotiation of the proposed agreement or arrangement?

1.4.1.5. What intra-agency (and, if applicable, inter-agency) coordination is required prior to concluding the proposed agreement or arrangement?

1.4.2. Forward legal memorandums and any relevant documents to the MAJCOM legal office for review and approval to proceed to negotiations. (T-1)

1.4.3. Ensure that under no circumstances shall a draft agreement or arrangement, in any form, be tendered to a foreign counterpart until a legal opinion has been rendered and permission to negotiate has been granted by the relevant MAJCOM authority. (T-0)

1.4.4. Participate as required in negotiations as the legal representative. (T-1)

1.4.5. Conduct a legal review of the final draft agreement prior to conclusion to ensure compliance with international and US laws and regulations. (T-0)

1.4.6. Maintain copies of all current international agreements directly applicable to their operations and forward within five (5) calendar days copies of new agreements concluded by such units to MAJCOM/DRU/FOA legal offices and to AF/JAO. (T-1) Provide additional certified copies as directed in [Attachment 3](#). (T-0)

1.4.7. Brief all commanders, deputies and appropriate staff, at Outside Continental United States locations and Continental United States locations that have foreign personnel assigned or present for training, on the authorities and approvals required to enter into international agreements. (T1)

2. Scope of Authority. This instruction is procedural only. Substantive legal authority for each obligation the United States will assume must reside in Constitutional, statutory, or other legal authority applicable to the subject matter of the proposed agreement.

2.1. **Authority.** Air Force personnel, or those serving with the Air Force, must obtain written approval from one of the following authorities before they may initiate, negotiate, or conclude international agreements (T-0):

2.1.1. The Secretary of the Air Force or an authorized representative.

2.1.2. The head of an Air Force organization, with proper delegated authority.

2.2. **Delegation of Authority.** Pursuant to AFPD 51-4 and [paragraph 2.5](#) of this instruction, MAJCOM/DRU/FOA commanders, and the Deputy Chiefs of Staff of HAF organizations are delegated authority to negotiate and conclude international agreements, or to approve the negotiation and conclusion of such agreements, except for those matters having policy significance.

2.2.1. The authority and scope of delegation apply to predominantly Air Force matters in the following categories:

2.2.1.1. Technical, operational, working, or similar agreements or arrangements concluded pursuant to a treaty or executive agreement that entails implementing arrangements.

2.2.1.1.1. **Note:** If an agreement merely implements an existing agreement, it is still necessary to determine that it is not a new international agreement and that the requirements of AFPD 51-4 and DoDD 5530.3 do not apply. Also, it is necessary to confirm that previously delegated authority remains valid. Narrowly interpret the delegation of authority for this category of agreements.

2.2.1.1.2. Authority is not delegated for implementing agreements which in any way expand or deviate from the basic agreement, or which address any of the following:

2.2.1.1.2.1. Status of Forces Agreement rights or place restrictions on operating rights for military forces outside of the US.

2.2.1.1.2.2. If there is any question as to proper procedures.

2.2.1.1.2.3. If there is any question whether properly delegated authority to negotiate an agreement exists.

2.2.1.1.2.4. Obtain advice from AF/JAO, who will consult with the Deputy General Counsel, Intelligence, International and Military Affairs (SAF/GCI) as needed.

2.2.1.2. Cooperative or reciprocal operational, logistical, training or other military support including the shared use or licensing of military equipment, facilities, services, or nonphysical resources.

2.2.1.3. Combined military planning, command relationships, military exercises and operations, minor and emergency force deployments, or exchange programs. (For United States Air Force officer exchanges with air forces of other governments, see AFI 16-107, *Military Personnel Exchange Program*.) OUSD(P) must approve the negotiation and conclusion of personnel exchange agreements.

2.2.1.4. Collection and exchange of military information or data, other than military intelligence.

2.2.1.5. Health and medical matters, including cooperative research, development, testing, evaluation, technical data exchange, and related standardization agreements concerning health and medical matters, provided that such agreements are not implemented through the security assistance program.

2.2.1.6. Sharing or exchange of DoD communications equipment, facilities, support, services, or other communications resources with a foreign country or alliance organization such as North Atlantic Treaty Organization (including agreements pursuant to 10 USC § 2350f, *Procurement of communications support and related supplies and services*), the use of US military frequencies or frequency bands, and the use of US communications facilities and systems by foreign organizations, whether overseas or in the US. Obtain approval in advance from the Office of the Under Secretary of Defense (Intelligence) (OUSD(I)) if such an agreement does not consist mainly of Air Force matters.

2.2.2. EXCEPTION: Per DoDD 5530.3 paragraph 13.1.2, agreements about operational command of joint forces require prior approval from the Chairman of the Joint Chief of Staff.

2.3. Exercise of Delegated Authority. Appropriate individuals must exercise this authority in compliance with laws and regulations applying to the particular subject matter of the international agreement. (T-0) These individuals are authorized to communicate through command channels with the DoD entity responsible for approving such agreements. When authority has been delegated either specifically or by category, the Air Force organization must fully coordinate the agreement. (T-0).

2.3.1. Exercise this authority in full consultation with other Air Force and DOD organizations that have an interest in the subject matter of the agreement. In particular, an Air Force command or organization assigned to or located within the geographic area of a unified command must advise that command, before negotiation, of any international negotiations which affect the unified command's plans and programs. (T-0) The Air Force negotiators must give a copy of each agreement they conclude to the affected unified command. (T-0) See [Attachment 3](#) for other organizations which must receive copies of the agreement.

2.3.2. Air Force organizations must coordinate with the Joint Chiefs of Staff or its designee any agreement in [paragraph 2.2.1.2.](#) that involves significant changes in logistics support for US Armed Forces and that affects joint plans and programs (including base adjustments). (T0)

2.4. Redelegation of Authority. The delegated authority in [paragraph 2.2](#) may be delegated further to subordinate commanders. Further delegation does not relieve the delegating commander of the final responsibility for compliance with this instruction and AFRD 51-4. Delegating commanders must send copies of all memoranda redelegating authority or otherwise implementing this instruction to AF/JAO. (T-1) Staff actions "for the commander" are not redelegations.

2.5. Specific Limits on Delegated Authority. The delegated authority in [paragraph 2.2](#) does not apply to the negotiation or conclusion of the following international agreements, even though they may otherwise fall within the scope of a category of agreements listed in [paragraph 2.2](#).

2.5.1. International Agreements That Have “Policy Significance”. Prior approval from OUSD(P) is required before negotiating or concluding these agreements. The term "policy significance" is to be broadly interpreted. If there is any doubt about the policy significance of a proposed agreement, it shall be sent informally through command channels to AF/JAO and SAF/GCI for determination. Agreements that have "policy significance" include, but are not limited to, those identified in [Attachment 1](#), International Agreements and Agreements with Policy Significance.

2.5.2. International Agreements That Would Rely on The Authority of 10 United States Code § 2304, *Contracts: competition requirements*, paragraph (c)(4) For Use of Other Than Competitive Contracting Procedures. Notify Air Force Contracting (SAF/AQC) and obtain the prior approval of the Office of the Under Secretary of Defense (Acquisition & Sustainment) (OUSD(A&S)) before negotiating or concluding such agreements.

2.5.3. International Agreements Requiring New Legislative Authority For Implementation. Obtain the prior approval of DoD/GC before negotiating or concluding such agreements.

2.5.4. International Agreements That Obtain Foreign Operating or Military Rights, As Defined in Attachment 1, "Foreign Operating Rights" and "Foreign Military Rights." The negotiation and conclusion of such agreements requires the approval of OUSD(P).

2.5.5. International Agreements That Involve or Are Likely To Involve The Release of Classified Military Information, Classified Technology, or Classified Material. Coordinate the security provisions of such agreements with OUSD(P) and OUSD(I) before making any commitment to representatives of a foreign government or international organization.

2.5.6. International Agreements Involving Security Assistance Programs. Obtain the prior approval of the Defense Security Cooperation Agency before negotiating and concluding such agreements. If and as needed, consult the Office of the Deputy Under Secretary of the Air Force (International Affairs) for information on regional and country-specific Air Force security cooperation efforts.

2.5.7. International Agreements Concerning Intelligence and Related Matters. Coordinate with AF/A2 and obtain the prior agreement of the Director, Defense Intelligence Agency, with the concurrence of OUSD(I), before negotiating and concluding agreements involving the collection and exchange of intelligence information (except signals intelligence agreements). Consult Defense Intelligence Agency Directive 2000.200, *International Defense Intelligence and Counterintelligence Liaison Relationships*, for additional guidance. The negotiation and conclusion of signals intelligence agreements also requires the prior approval of the Director, National Security Agency.

2.5.8. International Agreements Involving Coproduction, Licensed Production, or Related Standardization Matters. Defense Security Cooperation Agency must approve negotiating and concluding agreements implemented through the security assistance program (e.g., under a provision of the Arms Export Control Act). OUSD(A&S) must give prior approval of all other such agreements.

2.5.9. International Military or Industrial Security Agreements Under The Provisions of DoDD 5230.11, *Disclosure of Classified Military Information to Foreign Governments and International Organizations*, paragraph 6.1.2. OUSD(A&S) must give prior approval of such agreements.

2.5.10. International Agreements Relating to On-Base Financial Institutions (e.g., Military Banking Facilities and Credit Unions) and International Financial Agreements Requiring Coordination With the Treasury Department Under DOD 7000.14-R Volume 5. The Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) must give prior approval of such agreements. For approval, forward copies through command channels to the Deputy Assistant Secretary for Financial Operations (SAF/FMF). Send information copies to SAF/GCI and AF/JAO. OUSD(C) concurrence is required prior to negotiating or entering into any international agreement. (T-0)

2.5.11. International Agreements Related to Communications Security Technology, Services, Support, Research, or Equipment Development and Production. Such agreements require the prior approval of the National Security Agency.

2.5.12. International Agreements Related To Mapping, Charting, Or Geodesy. Coordinate with AF/A2 for such agreements. These type of agreements require the prior approval of the Director, National Geospatial-Intelligence Agency, with the OUSD(I) and OUSD(P) concurrence.

2.5.13. Agreements Related to Cooperative Research and Development and Acquisition (Except For Those Relating to Health and Medical Matters of the Air Force). The Deputy Under Secretary of the Air Force, (SAF/IA) is the office of primary responsibility for proposals relating to cooperative research, development, testing, evaluation, technical data exchange, and related standardization matters. Notify Air Force Contracting and forward all proposals for the negotiation of such agreements through command channels to SAF/IA.

2.5.14. Special Coordination Agreements. Agreements (including those agreements for which authority is delegated under [paragraph 2.2.](#) above) for which HAF has directed additional or special coordination/approval requirements.

2.6. Before negotiation, Air Force elements assigned to or located within the geographic areas of responsibility of Unified Commands shall advise the Unified Command of any international negotiations that might have impact on the plans and programs of such command, and shall furnish them with a copy of each agreement upon its conclusion. (T-0)

2.7. Agreements that have potential impact on the development or procurement of standardized weapon systems or equipment within the North Atlantic Treaty Organization shall be coordinated with the OUSD(A&S) and the Assistant Secretary of Defense for International Security Policy. (T-0).

3. Procedures. Air Force personnel will not make any unilateral commitment to any foreign government or international organization (either orally or in writing). (T-0) Personnel will not tender to a prospective party any draft proposed international agreement, nor initial or sign an international agreement, before obtaining appropriate approval to negotiate or conclude an international agreement. (T-0)

3.1. Air Force personnel must submit for SAF/GCI concurrence all proposals for the negotiation or conclusion of international agreements originating or received in the Secretariat of the Air Force, or the Air Staff, including (T-0):

3.1.1. Requests for authority to negotiate or conclude agreements.

3.1.2. Proposed international agreements referred to the Secretariat of the Air Force or Air Staff for coordination by any Air Force command or agency, the Office of the Secretary of Defense, Joint Chiefs of Staff, another DoD component, the Department of State, or another US Government agency.

3.2. Air Force personnel must submit all proposals for the negotiation or conclusion of international agreements within the authority of MAJCOMs, DRUs, FOAs (or their subordinate commands if properly re-delegated) to the staff judge advocate of that command or agency for legal review. (T-0)

3.3. Air Force personnel must obtain a legal review determining that an agreement solely defines administrative procedures from the servicing staff judge advocate of the command or agency prior to entering into any negotiation. (T-0)

3.4. Air Force personnel must submit for concurrence all proposals for the negotiation or conclusion of international agreements that have US financial obligations, cost or fiscal implication and those agreements requiring SAF/GCI concurrence. MAJCOM/DRU/FOA or subordinate command comptrollers must concur on all such proposals requiring the Office of the Assistant Secretary of the Air Force (Financial Management and Comptroller) (SAF/FM) concurrence. (T-0)

3.5. **Request for Authority To Negotiate or Conclude.** When a proposed agreement is beyond the delegated authority, or approval by HAF is required under [paragraph 2.5.14](#), submit a request for authority to negotiate or conclude the agreement to the appropriate HAF functional office through the chain of command (see [Attachment 2](#)). HAF functional offices will ensure that SAF/GCI and AF/JAO receive copies of any proposals. When no HAF functional office is apparent, send the proposal to AF/JAO for dissemination to the appropriate HAF offices. The HAF functional office will coordinate within the Air Staff, SAF/GCI, and, as appropriate, with other elements of the Secretary of the Air Force (SECAF). Before approving any request to negotiate or conclude an international agreement, the responsible HAF functional office will obtain any required coordination or approval from appropriate DoD offices.

3.6. All international agreements concluded by AF personnel shall include the date and place of signature(s) and the typed name and title of each signatory. (T-0) In addition, all amendments to international agreements concluded by AF personnel shall include the title and date of conclusion of the amended agreement. (T-0)

4. International Agreement Amendments. The negotiation and conclusion of an amendment must be approved in accordance with this instruction. (T-0) Amendments must be approved by the same US headquarters or office (or its successor) that approved the original agreement. (T-0) Another US official who has been expressly delegated authority may approve amendments to the agreement.

5. Oral Agreements. Any oral agreement that meets the international agreement criteria in the definition in [Attachment 1](#) is an international agreement that is fully subject to the requirements of this instruction and DoDD 5530.3. The authorized Air Force representative who enters into an oral agreement must put it in writing. (T-0) A memorandum for the record may fulfill this requirement. After reducing the agreement to writing, immediately report the agreement in accordance with [paragraph 8](#) of this instruction. Oral agreements, however, should be the exception and not the rule. Upon conclusion of an oral agreement, enter the reasons for employing the oral rather than written form into the negotiating history under [paragraph 9](#) and also summarize those reasons in the transmittal letter (see [Attachment 3](#), A3.2.).

6. Agreements in Foreign Languages. Air Force personnel will not conclude any international agreement in a foreign language text unless the agreement meets one of the following criteria (T0):

6.1. The agreement expressly provides that the English language text is the governing text in the event of conflict between the different language texts; or

6.2. The agreement expressly provides that the English language text and the foreign language text are equally authentic. Each foreign language text is subject to a certification executed before conclusion of the agreement regardless of the final language. The certification will state that the foreign language text and the English language text are in conformity with each other and have the same meaning in all substantive respects. A civilian, military, or local national translator, designated as qualified (consistent with local practices) by the Air Force or Department of State shall sign and date the certification. The qualification officials must be authorized to negotiate and conclude international agreements. Transmit the certification, along with the agreement, to the addressees in [Attachment 3](#).

7. International Agreements Containing Advance Payment Terms. Only 10 USC 2396, *Advances for payment for compliance with foreign laws, etc.*, and 10 USC § 2307, *Contract financing*, authorize advance payments to foreign governments and international organizations. Advance payments are the least desirable method of financing. Use advance payments only when necessary to comply with the foreign country's laws and ministerial directives. When advance payments are appropriate, negotiators will negotiate terms and conditions that are consistent with prudent cash management. (T-1) Advance payment procedures should minimize the amount of cash outlays and the duration of the prepayment time period. Coordinate advance payment requests through command comptroller channels to SAF/FMF, Washington DC 20330. SAF/FMF will obtain the concurrence of SAF/GCI. The advance payment request shall contain the following information (T-0):

7.1. The foreign law or ministerial directive that requires payment in advance.

7.2. Location and description of project being financed.

7.3. Cost of the project and amount of advance needed.

- 7.4. Name and location of the organization designated as recipient of the advance.
- 7.5. Scheduled dates for the advance payments and the start of the project.
- 7.6. Detailed description of the payment and recoupment/reconciliation procedures.
- 7.7. Provisions for interest, if any, to be accrued from the funds advanced.
- 7.8. Name and address of the organization negotiating the advance.
- 7.9. Appropriation funding the project.
- 7.10. Statement indicating project funding status (i.e., fully, partially, or not funded).

8. Reporting Agreements. Title 1 USC § 112b, (Case-Zablocki Act), requires the Secretary of State to report to the Congress all international agreements, other than treaties, within sixty (60) calendar days after their entry into force with respect to the United States. In accordance with Title 22 Code of Federal Regulations Part 181.5, *Twenty-day rule for concluded agreements*, each Air Force organization concluding an international agreement must send the original or certified copies (or both) in time to arrive at the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State, not later than twenty (20) calendar days after signature. (T-0) (EXCEPTION: Submit international intelligence agreements in time to arrive at Defense Intelligence Agency or National Security Agency, as appropriate, not later than fifteen (15) calendar days after signature. (T-0)) Use the format in [Attachment 3](#). Send courtesy copy of intelligence agreements to AF/A2 (AF/A2, 1700 AIR FORCE PENTAGON RM#5E665, WASHINGTON DC 20330-1700). Provide a copy of any annual list of terminated international agreements prepared by or for the air component of a unified command to AF/JAO. (T-1)

9. Negotiating History of Agreements. The Air Force organization that negotiates an international agreement must compile and keep a complete, retrievable negotiating history file for each agreement. (T-0) The historical file must be maintained for the duration of the agreement or until it no longer has legal significance, whichever is longer. (T-0)

10. Office of Record. AF/JAO maintains an index of all international agreements involving predominately Air Force matters. Each Air Force organization that exercises delegated authority under this instruction must name a single office to carry out the required recordkeeping and reporting, and provide AF/JAO with one copy of its implementing directive. (T-1)

11. Compliance. According to DoDD 5530.3, the Air Force must oversee compliance with those international agreements for which it is responsible. The Air Force must keep the DoD/GC up to date and fully informed on compliance with such international agreements.

11.1. **Resolving Compliance Issues.** When a party questions the compliance with an international agreement that cannot be resolved by informal discussion between working level authorities, send a report of the relative issues and circumstances to SAF/GCI, with a copy to AF/JAO (except for questions governed by the procedures set forth in Air Force Joint Instruction 51-706, *Status of Forces Policies, Procedures, and Information*).

11.2. **Resolving Policy Issues.** Unless previously authorized by the Secretary of Defense, Air Force personnel shall not take any action to resolve or otherwise deal with questions having policy significance before obtaining the written concurrence of both USD(P) and DoD/GC (T0). Submit requests for USD(P) and DoD/GC concurrence through command channels then AF/JAO to SAF/GCI. SAF/GCI will consult with SAF/IA and other appropriate HAF offices regarding appropriate action.

JEFFREY A. ROCKWELL,
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFPD 51-4, *Operations and International Law*, 24 July 2018

AFJI 51-706, *Status of Forces Policies, Procedures, and Information*, 15 December 1989

AFI 16-107, *Military Personnel Exchange Program*, 29 August 2018

AFI 33-360, *Publications and Forms Management*, 1 December 2015

AFMAN 33-363, *Management of Records*, 1 March 2008

HAFMD 1-14, *General Counsel and The Judge Advocate General*, 29 December 2016

1 USC § 112b, *Case-Zablocki Act*

10 USC § 2304, *Contracts: competition requirements*

10 USC § 2307, *Contract financing*

10 USC § 2341, *Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States*

10 USC § 2350f, *Procurement of communications support and related supplies and services*

10 USC § 2396, *Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries*

10 USC § 2667, *Leases: non-excess property of military departments and Defense Agencies*

10 USC § 2675, *Leases: foreign countries*

22 USC § 2796, *Leasing authority*

22 CFR Part 181.5, *Twenty-day rule for concluded agreements*

DoDD 2010.09, *Acquisition and Cross-Servicing Agreements*, 28 April 2003

DoDD 5230.11, *Disclosure of Classified Military Information to Foreign Governments and International Organizations*, 16 June 1992

DoDD 5530.3, *International Agreements*, 11 June 1987

DoD Financial Management Regulation 7000.14-R, Volume 5, current edition

Defense Intelligence Agency Directive 2000.200, *International Defense Intelligence and Counterintelligence Liaison Relationships*, 3 July 2014

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AF—Air Force

AFI—Air Force Instruction

AFJI—Air Force Joint Instruction

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive

CONPLAN—Concept of Operations Plan

DoD—Department of the Defense

DoDD—Department of the Defense Directive

FM—Financial Management

GC—General Counsel

GCI—General Counsel, Intelligence, International and Military Affairs

HAF—Headquarters Air Force

HAFMD—Headquarters Air Force Mission Directive

IA—International Affairs

JA—Judge Advocate

JAO—Judge Advocate Operations and International Law

OPR—Office of Primary Responsibility

SECAF—Secretary of the Air Force

Terms

Conclusion—The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement by the United States.

Foreign Military Rights—These rights are derived from a foreign government's permission or approval to conduct US operations or activities of a longer duration and of a more permanent nature in its sovereign territory. These rights are the subject of government-to-government negotiations. They permit operating US bases overseas, stationing US units overseas, establishing lines of communication, etc. Requirements for these rights are set up as part of US-worldwide programs and requirements.

Foreign Operating Rights—These rights are derived from a foreign government's permission or approval to conduct US operations or activities of short duration in or over its sovereign territory. Such rights permit (subject to restrictions imposed by the foreign government) surveys, temporary support facilities, entry of personnel, etc. In some situations, a foreign operating right may permit entry into a foreign territory without a subsequent foreign clearance. In others, foreign operating rights may only pertain to proposed activities in general, and one or more foreign clearances may be needed to enter, transit, or exit the foreign territory.

International Agreement—Any agreement concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization, that:

- Is signed or agreed to (including oral commitments) by personnel of any DOD component, or by representatives of the Department of State or any other department or agency of the US Government;
- Signifies the intention of its parties to be bound in international law;
- Is denominated as an international agreement or as a memorandum of understanding, memorandum of agreement, memorandum of arrangements, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide-memoire, agreed minute, plan, contract, arrangement, statement of intent, letter of intent, statement of understanding, standard operating procedure, Concept of Operations Plan, or any other name connoting a similar legal consequence.

For purposes of this instruction, an international agreement is **not** among the following categories of agreements:

- Contracts made under the Federal Acquisition Regulation.
- Foreign Military Sales Credit Agreements.
- Foreign Military Sales Letters of Offer and Acceptance.
- Foreign Military Sales Letters of Intent.
- Agreements, North Atlantic Treaty Organization Standardization Agreements, Quadripartite Standardization Agreements, Air Standardization Coordination Committee Air Standards, and Naval Standardization Agreements that record the adoption of like or similar military equipment, ammunition, supplies and stores or operational, logistic, and administrative procedures. (EXCEPTION: A Standardization Agreement which provides for mutual support or cross-servicing of military equipment, ammunition, supplies and stores or for mutual rendering of defense services, including training, does constitute an international agreement.)
- Leases under 10 USC § 2667, *Leases: non-excess property of military departments and Defense Agencies*; 10 USC § 2675, *Leases: foreign countries*; and 22 USC § 2796, *Leasing authority*.
- Agreements concluded solely to establish administrative procedures. Coordinate the determination that an agreement solely establishes administrative procedures with the staff judge advocate of the command or agency involved prior to entering into any negotiation.
- Acquisitions or orders pursuant to cross-servicing agreements made under the authority of 10 USC § 2341 *Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States* and DoDD 2010.09, *Acquisition and Cross-Servicing Agreements*. Exception: Umbrella agreements, implementing arrangements and cross-servicing agreements under these authorities are international agreements.

International Agreements That Have "Policy Significance."—Include, but are not limited to international agreements that:

- Specify national disclosure, technology-sharing or work-sharing arrangements, coproduction of military equipment, or offset commitments as part of an agreement for international cooperation in the research, development, testing, evaluation, or production of defense articles, services, or technology;
- Would directly and significantly affect foreign or defense relations between the United States and another government because of their intrinsic importance or sensitivity;

- Would by their nature, require approval, negotiation, or signature at the Office of the Secretary of Defense or diplomatic level; or
- Would create security commitments not currently assumed by the United States in existing mutual security or other defense agreements and arrangements, or which would increase US obligations with respect to the defense of a foreign government or area.

Negotiation—Communication by any means of a position or an offer, on behalf of the US, the DoD, or on behalf of any officer or an organizational element thereof, to an agent or representative of a foreign government, including an agency, instrumentality, or political subdivision thereof, or of an international organization, in such detail that the acceptance in substance of such position or offer would result in an international agreement. The term "negotiation" includes any such communication even if it is conditioned on later approval by higher authority. The term "negotiation" also includes provision of a draft agreement or other document, the acceptance of which would constitute an agreement, as well as discussions concerning any US or foreign government or international organization draft document whether or not titled "agreement." The term "negotiation" does not include preliminary or exploratory discussions or routine meetings where no draft documents are discussed, so long as such discussions or meetings are conducted with the understanding that the views communicated do not and shall not bind or commit any side legally or otherwise.

Attachment 2

PROCEDURES FOR REQUESTING TO NEGOTIATE OR CONCLUDE AN INTERNATIONAL AGREEMENT

A2.1. Procedures. When a proposed international agreement goes beyond the delegated authority, written authority to negotiate or conclude the agreement is required. The proponent must submit a request, by letter or message, and must include (T-0):

A2.1.1. A draft text, outline, or complete description of the proposed international agreement. (T-0)

A2.1.2. A legal memorandum stating the Constitutional, statutory, or other legal authority for each proposed obligation that the US will assume in the agreement and an explanation of other relevant legal considerations. (T-0)

A2.1.3. A fiscal memorandum stating the estimated cost of each proposed obligation that the DoD will assume in the agreement, the source of funds to be obligated, and reference to foreign currency payment provisions, if applicable. (T-0)

A2.1.4. A Technology Assessment and Control Plan per DoDD 5530.3. (T-0)

A2.1.5. A quid pro quo analysis that fully addresses the benefit to be derived by each signatory to all proposed agreements involving cooperative research, development, testing, evaluation, technical data exchange, and related standardization matters. (T-0)

A2.2. Procedures Unique to International Intelligence Agreements. The Defense Intelligence Agency coordinates and approves military and military-related intelligence agreements and arrangements between DoD components and foreign governments, international organizations or other entities. (Exceptions: signals intelligence, geospatial intelligence and imagery intelligence which are established under the authority of the National Security Agency, National Geospatial-Intelligence Agency or the National Reconnaissance Office.) Air Force intelligence organizations may only initiate or conduct negotiations with a foreign government if expressly authorized in accordance with Defense Intelligence Agency Directive 2000.200. (T-0) Coordinate with AF/A2 for international intelligence agreements prior to submitting the agreements to the respective intelligence agencies. (T-1) The Defense Intelligence Agency's Office of Partner Engagement is the OPR for international intelligence exchange agreements for defense and defense-related intelligence agreements.

Attachment 3**REPORTING INTERNATIONAL AGREEMENTS**

A3.1. Addressees. Each Air Force organization that concludes an international agreement must submit reproducible copies of the agreements to the following addressees. (T-0) Copies may be certified by any officer or US civilian employee authorized by US law to administer oaths or to make acknowledgements.

A3.1.1. Department of State, Attn Assistant Legal Adviser, Treaty Affairs, Washington DC, USA, 20520. (The original and one certified copy, or two certified copies)

A3.1.2. Department of Defense General Counsel, 1600 DEFENSE PENTAGON, WASHINGTON DC, 20301-1600. (Two certified copies)

A3.1.3. Office of the Deputy General Counsel, Intelligence, International and Military Affairs (SAF/GCI), 1740 AIR FORCE PENTAGON, WASHINGTON DC, 20330-1740. (One certified copy)

A3.1.4. Operations and International Law Division, Office of The Judge Advocate General (HQ USAF/JAO, 1420 AIR FORCE PENTAGON, WASHINGTON DC 20330-1420). (One certified copy)

A3.1.5. Any other offices required by unified or specified command directives or deemed appropriate by the component Air Force commands or their designee.

A3.2. Letter of Transmittal. Each Air Force organization must include a letter of transmittal with each international agreement (written and oral) (T-0), that:

A3.2.1. Identifies type of agreement: bilateral or multilateral.

A3.2.2. Specifies the countries or international organization(s) that are party to the agreement.

A3.2.3. Lists all US and foreign governmental agencies or units or international organizations responsible for carrying out the agreement.

A3.2.4. Specifies the full title and security classification of the agreement.

A3.2.5. Specifies the subject of the agreement and summarizes the agreement.

A3.2.6. Explains why the agreement was concluded and what the effect of the agreement is likely to be, including benefits to each party.

A3.2.7. Indicate the geographic location where the agreement was signed.

A3.2.8. Specifies the legal authority that authorized the DoD to enter into and carry out the agreement (specifying both the procedural authority under this Instruction and the substantive legal authority for each obligation undertaken on behalf of the US under the agreement).

A3.2.9. States the date of entry into force.

A3.2.10. States the date of termination.

A3.2.11. Contains the names of all signing officials, their titles and the offices they represent, and their countries or international organization.

A3.2.12. States the full titles and dates of the agreement(s), if any, upon which the agreement is based or amends.

A3.2.13. States the date of signature of the agreement.

A3.2.14. States any conditions for entry into force.

A3.2.15. Specifies the organization responsible for maintaining the negotiating history (see [paragraph 9](#)).

A3.2.16. **NOTE:** If the transmitted text is a copy of the original, certify the copy to be a true copy of the original. If transmitting the text of the agreement more than twenty (20) calendar days after its signature, the transmittal document shall fully and completely describe the reasons for the late transmittal. For oral agreements see requirements in [paragraph 5](#) of this instruction.